

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2448 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

P J TRIVEDI

Versus

DIRECTOR DRUGS CONTROL ADMINISTARATION

Appearance:

MR Umesh D. Shukla for Petitioner

MR HL JANI for Respondent

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 04/10/96

ORAL JUDGMENT

Heard learned counsel for the parties. The petitioner has challenged by this Special Civil Application, the order dated 2.9.85, under which licence in Form No.25 and 28 granted under the provisions of the Drugs and Cosmetic Act, 1945, has been cancelled and further renewal application in Form No.27 has been rejected.

2. The learned counsel for the respondent raised a preliminary objection that this Special Civil Application is not maintainable against the impugned order as the petitioner has right of appeal before the State Government as this order has been passed by the Director, Drugs Control Administration, State of Gujarat. The learned counsel for the petitioner does not dispute that the order impugned in this Special Civil Application is appealable. If that is the position, then I fail to see any justification in the action of the petitioner to approach this Court directly without first availing alternative remedy of appeal. The only apprehension of the learned counsel for the petitioner is that in case this Special Civil Application is dismissed on the ground of alternative remedy, then as the limitation for filing an appeal has already expired, the appellate authority may reject the appeal on the ground of limitation. This apprehension of the petitioner is not well founded. The petitioner has approached this Court, though may not be within a period of limitation prescribed for filing appeal, but the objection regarding maintainability of Special Civil Application has been raised by the respondent, and therefore the petitioner cannot be rendered remediless by allowing the respondent to dismiss the appeal now filed only on the ground of limitation. Moreover, the grounds which have been raised by the petitioner in this Special Civil Application can also be gone into by the appellate authority in the appeal. The petitioner has not challenged the validity of any of the provisions of the Act or Rules framed thereunder and as such, only appropriate remedy should have been to file the appeal. It is a statutory remedy provided and where alternative remedy is available, this writ petition should not have been entertained. The parties should have insisted first to approach the appellate forum.

3. In the result, this Special Civil Application is dismissed on the ground of availability of alternative remedy to the petitioner. In case the petitioner may so desire, file appeal before the appropriate authority against the impugned order within a period of one month from the date of receipt of certified copy of this order and the appellate authority is directed to decide the same within a period of six months thereafter. In case grievances of the petitioner are not acceptable by the appellate authority, it is expected of the authority to pass a reasoned order and a copy of the same may be sent to the petitioner by registered post. However, it is made clear that the appeal of the petitioner shall be treated within time limit and shall be decided on merits by the appellate authority. This Special Civil

Application is disposed of accordingly. Rule discharged
subject to aforesaid directions and observations. No
order as to costs.

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(sunil)